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OFFICE OF PETITIONS

In re Application of :
Johannes Ilg : DECISION ON PETITION
Application No. 09/640,552 :
Filed: August 17, 2000 :
Attorney Docket No.051480-5028:

This is a decision on the "NON-FEE PETITION UNDER 37 C.F.R. § 1.181 TO REVIVE HOLDING OF ABANDONMENT" filed September 19, 2005. Alternatively, applicants filed a "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR §1.137(b)."

The petition under § 1.181 is GRANTED.

The petition under § 1.137 is DISMISSED without consideration on the merits.

By Notice of Abandonment mailed July 19, 2005, applicants were advised that the application was abandoned as a result of petitioner's failure to take appropriate action in a timely manner after the decision rendered on April 28, 2005 by the Board of Patent Appeals and Interferences. Therefore, the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(c). As no claim was considered allowed, the application became abandoned.

Petitioner argues that, following the decision by the Board, claims 12 and 13 stand allowed. Further, given the status of

claims 12 and 13, applicant should have received communication from the USPTO examiner in charge stating that the rejected claims were to be considered terminated and the application should have passed to issue on allowed claims 12 and 13.

Petitioner's arguments have been considered and found persuasive. 37 CFR § 1.197(b) provides that:

- (1) Proceedings on an application are considered terminated by the dismissal of an appeal or the failure to timely file an appeal to the court or a civil action (§ 1.304) except:
 - (i) Where claims stand allowed in an application; or
 - (ii) Where the nature of the decision requires further action by the examiner.

Further, pursuant to MPEP § 1214.06, paragraph II, when the time for seeking court review (plus 2 weeks to allow for information as to the filing of an appeal or civil action, if any, to reach the examiner) has passed without such review being sought, the examiner must take up the application for consideration. As to claims that stand allowed:

The appellant is not required to file a reply. The examiner issues the application or ex parte reexamination certificate on the claims which stand allowed.

Here, the record confirms that after the decision by the Board, claims 12 and 13 stand allowed. Thus, petitioner is correct that the holding of abandonment is not proper.

Accordingly, the Notice of Abandonment mailed July 19, 2005 is hereby **VACATED**, and the holding of abandonment is hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

Consideration of the petition to revive is unnecessary, the petition fee is being refunded to Deposit Account No. 50-2148, as authorized. The conditional RCE filed on petition to revive will not be entered.

Technology Center AU 2635 has been advised of this decision. The application file is being forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment and for action by the examiner on the application after decision by the Board given that claims 12 and 13 stand allowed. (The conditional RCE (and submission) will not be entered).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized flourish at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions